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Authorities

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 81

LIDE THOMPSON, MATTIE THOMPSON, MARY TUKES, VERA THOMPSON, JIM THOMPSON, ALINE UTSEY, RILLA McINTYRE AND RUTH McINTYRE,

Petitioners,

vs.

LUTHER THOMPSON AND H. T. PATTON, EXECUTOR OF THE ESTATE OF DR. S. A. THOMPSON, DECEASED,

Respondents

PETITIONER'S REPLY BRIEF

In this Court's determination as to whether petitioners are entitled to a writ of certiorari so that their case may be decided on its merits, there are three very important issues. All three of these issues relate to whether or not petitioners have been afforded due process of law in connection with their cause of action in this case. Two of these important points have been heretofore relied upon and discussed. They are: (1) whether the Probate Court of Ouachita County, after determining that it did not have jurisdiction in this case, could proceed as it did to make findings of fact calculated to bar petitioners from further action in any court because of the doctrine of *res judicata*, and (2) whether the Probate Court of Ouachita County could properly make findings of fact, although refusing to hear testimony on the case and make such findings of fact in granting the defendant's motion to dismiss.

Another very important point, which has not heretofore been specifically raised, but which may be raised at any time

in court proceedings, is the jurisdiction of the Probate Court in the first instance to order a sale of petitioners' lands. Inasmuch as this is a question of jurisdiction, it may be raised at any time. The Supreme Court of the United States has held time and again that questions of jurisdiction may be raised for the first time before this tribunal. (*Matson Navigation Co.* v. *United States,* 76 L. Ed. 338.)

Before discussing these issues, it might be well to recall the circumstances out of which this cause arose.

On or about May 1, 1933, William Thompson (negro), resident of Ouachita County, Arkansas, died intestate, leaving surviving him seven children, one of which is the respondent, Luther Thompson, and the others of which are petitioners Lide Thompson, et al. Respondent, Luther Thompson, was appointed administrator of the estate, *and his two bondsmen were Dr. Thompson and Roy Smith,* both of whom were creditors of the decedent. On August 27, 1934, the administrator filed the inventory which may be found on page 41 of the Record. At that time two claims were filed against the estate. Stephens Drug Company filed a claim in the sum of $54.35, which was allowed in the sum of $43.48. Dr. S. A. Thompson, *a wealthy and educated white man,* who attended the deceased in his last illness, filed a claim in the sum of $588.42 to cover services rendered in defendant's last illness. Plaintiffs allege and it has not been denied that Dr. S. A. Thompson himself hired a lawyer to handle the estate and that Dr. Thompson had Luther Thompson appointed administrator for the purpose of taking from these poor and ignorant negroes their property.

The matter of the estate rested after the filing of the inventory as shown on pages 41 and 42 of the Record until sometime in 1936 when Smith Brothers and Company filed a claim against the estate in the sum of $250.00. The statute of nonclaim had previously barred the claim of

Smith Brothers and Company and the administrator had no right to allow the claim. During the period from 1934 to 1936, it was alleged and not denied that approximately $250.00 rent was collected from the lands, which, together with the personal property, made a total of $996.39 worth of personal property in the hands of the administrator, over one-half of which was cash or bank deposits.

Still acting at the suggestion of Dr. Thompson and his attorney, the administrator filed a petition to sell the lands *to pay the debts of the estate,* alleging that such order was necessary to pay the said debts of the estate, and said order was granted and the property was sold thereunder. It should be remembered that the inventory showed sufficient personalty to pay these debts. If the personalty was still available, then there was no jurisdiction for such an order. If the administrator had spent the personal property, then the creditors, as bondsmen, were liable therefor, and there was still no need to sell the lands and no jurisdiction in the Probate Court to order the sale thereof.

We shall now attempt to briefly discuss these three all-important issues in the light of respondents' brief.

I

The Probate Court of Ouachita County Could Not, Without Violating the Due Process of Law Clause of the Constitution of the United States, Indicate, in One Breath, That It Did Not Have Jurisdiction in the Case, and, in the Next Breath, Attempt to Make Findings of Fact Calculated to Bar Plaintiffs from Relief in a Court Which Would Have Jurisdiction.

Respondents say in their brief:

"*The contention that the probate court passed on the merits of the case at the same time holding that it was without jurisdiction is a specious argument. The court*

> *never held that it was without jurisdiction of the subject matter, but held that it was without jurisdiction to set aside its former judgment on the showing made by the petitioners in the pleadings which they filed.''* (Italics ours.)

By reference to page 20 of the Transcript of Record, we note that in its findings the Probate Court of Ouachita County stated:

> "There is no doubt, in the mind of the Court, that the Chancery Court not only has jurisdiction in this case, *but is the only court in which suit may be filed for the relief sought by the plaintiffs in this action.* * * *
>
> *"The Court is of the opinion, and finds, that the probate court in which the case was filed, has no jurisdiction to grant the relief prayed for in plaintiff's complaint, and the action should be dismissed on that ground.* However, there are other questions of fact presented in the pleadings and argued by the parties in their briefs submitted to the court, *and no doubt the parties desire a finding on those issues of fact.''* (Italics ours.)

If the court had no jurisdiction, it is well settled that it could not make any valid findings in the case, even by consent of the parties. (*Industrial Addition Association* v. *Commissioner of Internal Revenue,* 89 L. Ed. 260, Headnote 2.) Its attempt to find the facts by saying "no doubt the parties desire" such findings is an attempt to foreclose rights of these plaintiffs by application of the doctrine of *res judicata.* This contention is not specious as claimed by respondents nor did the court hold that it was without jurisdiction to set aside the judgment on the showing made by petitioners. *It held specifically that the Chancery Court was the only court having the authority to grant them relief prayed for and that under these circumstances it had no authority to make any determination whatever in the case.*

If this writ of certiorari be denied, petitioners will have been denied a trial of their cause of action on its merits as effectively as if the court had refused to allow them to file their case, and they will have thus been denied due process of law.

II

The Determination of Facts Adverse to Those Alleged in Connection With the Granting of Motion to Dismiss

Plaintiffs brought the present action alleging fraud on the part of the respondents on both the court and plaintiffs and setting out specifically the circumstances of that fraud. Defendants move to dismiss the action on the ground that the court was without jurisdiction, which motion to dismiss was nothing more nor less than a demurrer, and, for the purpose of determination of the motion, it must be assumed that plaintiffs' allegations were true, because the motion to dismiss was ruled on before plaintiffs had an opportunity to present their testimony, and before any testimony was introduced in behalf of defendants. The court, however, in granting the motion to dismiss, made findings of fact which were completely without any evidence whatever before the court, and which were completely adverse to the allegations of the plaintiffs. This was no mistake of law but was, instead, a denial to plaintiffs of a trial and substituting for a trial on its merits the arbitrary findings of fact by the lower court. Such proceedings could not possibly have afforded plaintiffs (petitioners herein) due process of law. This was not merely incorrect findings of fact or incorrect determination of law, but it was, instead, a denial that plaintiffs had any right whatever in the court. *Such denial can only be reasonably explained on the basis of the fact that plaintiffs are poor humble negroes and defendant was a wealthy*

and prominent white man. This Court has held that it will look not merely to the form in cases of this nature, but also to the substance, and when due process is denied petitioners, the mere fact that the *form* of a trial has been afforded will not bar the Supreme Court from insisting that justice be done. (*Washington ex rel. Oregon Railroad & Navigation Co.* v. *Fairchild,* 56 L. Ed. 863, 868.)

III

The Jurisdiction of the Court to Sell Petitioners' Lands

The laws of Arkansas provide that property of a deceased person vest immediately upon his death in his heirs, subject to divestment only on the condition that the property must be sold to pay the debts of the estate. Under these circumstances a Probate Court has no jurisdiction whatever over lands which have passed to the heirs of a deceased person unless it first be shown that the sale is necessary to pay the debts of the estate. The Supreme Court of Arkansas has held that the Probate Court must, in its order of sale, recite facts sufficient to show that it has jurisdiction to sell the lands. (*Crider* v. *Simmons,* 192 Ark. 1075.) There can be no doubt but that if there is no necessity for the sale of the property in order to pay the debts of the estate the Probate Court does not have jurisdiction of the subject matter, and cannot make any orders whatever concerning the property.

Let us now consider a case which we believe to be very similar in legal principle to the case at bar. This case is *Scott* v. *McNeal,* 38 L. Ed. 896, 154 U. S. 34. The case involves an action by Scott to recover possession of property in the State of Washington. The facts reveal that Scott was absent from his home for a long period of time and that it was finally assumed that he was dead; that under the statutes of the State of Washington, any person miss-

ing and unaccounted for for a period of seven years may be found to be dead. An administrator was appointed in Scott's estate and the administrator obtained an order from the Probate Court ordering the sale of the lands. The lands were sold to the defendants, who were innocent third parties. Scott returned and sued for the lands and the Probate Court held that its determination of his death was authorized under the state statute and was legally binding and that a sale had thereunder could not be disturbed. The case was appealed to the Supreme Court of Washington which also held that under its statute plaintiff was barred from recovering his lands. On appeal to the Supreme Court of the United States, this Court held that the Probate Court was without jurisdiction in the case and that its order of sale of his lands was therefore not due process of law and that it had authority to intervene so that due process of law could be afforded plaintiff. The court, in so holding, stated:

> "At the time of the offer of this evidence, the plaintiff objected to the admission of the proceedings in the probate court, upon the ground that they were absolutely void, because no administration on the estate of a live man could be valid, and the probate court had no jurisdiction to make the orders in question as irrelevant and immaterial. *But the court ruled that, the probate court having passed upon the sufficiency of the petition to give it jurisdiction, and having found that the law presumed Scott to be dead, its proceedings were not absolutely void;* and therefore admitted the evidence objected to, and directed a verdict for the defendants, which was returned by the jury and judgment rendered thereon. The plaintiff duly excepted to the rulings and instructions at the trial, and appealed to the Supreme Court of the State.
>
> "In that court, it was argued in his behalf 'that to give effect to the probate proceedings under the circumstance would be to deprive him of his property

without due process of law.' But the court held the proceedings of the probate court to be valid, and therefore affirmed the judgment. * * *

"The plaintiff formerly owned the land in question, and still owns it, unless he has been deprived of it by a sale and conveyance, under order of the probate court of the county of Thurston and territory of Washington, by an administrator of his estate, appointed by that court on April 20, upon a petition filed April 2, 1888.

"* * * 'The title of Hotchkiss as administrator is null, because he had no authority to make it, and the prescription pleaded does not validate it. It was not a sale, the informalities of which are cured by a certain lapse of time, and which becomes perfect through prescription; but it was void, because the court was without authority to order it.' 'It is urged on the part of the defendants, that the decree of the court ordering the sale of the succession property should protect them, and, as the court which thus ordered the sale had jurisdiction of succession, it was not for them to look beyond it. *But that is assuming as true that which we know was not true.* The owner was not dead. There was no succession.' And the court added that Chief Justice Marshall, in *Griffith* v. *Frazier*, 12 U. S. 8 Cranch, 9 (3:471) disposed of that position. Burns *v.* Van Loan (1877) 29 La. Ann. 560, 563. * * *

"The grounds of the judgment of the Supreme Court of the State of Washington in the case at bar, as stated in its opinion, were that the equities of the case appeared to be with the defendants; that the court was inclined to follow the case of *Roderigas* v. *East River Sav. Inst.*, 63 N. Y. 460, 20 Am. Rep. 555, and that, under the laws of the territory, the probate court, on an application for letters of administration, had authority to find the fact as to the death of the intestate; the court saying: 'Our statutes only authorize administration of the estate of deceased persons, and before granting letters of administration the court must be satisfied by proof of the death of the intestate. The proceeding is substantially in rem, and all parties must

be held to have received notice of the institution and pendency of such proceedings, where notice is given as required by law. Section 1299 of the 1881 Code gave the probate court exclusive original jurisdiction in such matters, and authorized such court to summon parties and witnesses, and examine them touching any matter in controversy before 'said court or in the exercise of its jurisdiction.' Such were the grounds upon which it was held that the plaintiff had not been deprived of his property without due process of law. * * *

"The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains 'nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' *These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities.* (Citing cases) And the first one, as said by Chief Justice Waite in United States *v.* Cruikshank, 92 U. S. 542, 554, repeating the words of Mr. Justice Johnson in Bank of Columbia *v.* Okley, 17 U. S. 4 Wheat. 235, 244, *was intended to 'secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'*

"Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the Constitution of the United States, *this Court is no more bound by that court's construction of a statute of the territory or of the state, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the state,* or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state. In every such case, this Court must decide for itself the true construction of the statute. *No judgment of a court*

is due process of law, if rendered without jurisdiction in the court, or without notice to the party.

"The words 'due process of law', when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this Court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. * * *'

"Even a judgment in proceedings strictly in rem binds only those who could have made themselves parties to the proceedings, and who had notice, either actually, or by the thing condemned being first seized into the custody of the court. (Citing cases) *And such a judgment is wholly void, if a fact essential to the jurisdiction of the court did not exist.* * * *

"The estate of a person supposed to be dead is not seized or taken into the custody of the court of probate upon the filing of a petition for administration. * * *

"* * * And by Sections 1493 and 1494, a petition by an executor or administrator for the sale of real estate for the payment of debts must set forth 'the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seised, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased'; and must show that it is necessary to sell real estate 'to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration.'

"The appointment by the probate court of an administrator of the estate of a living person, without notice to him, being without jurisdiction and wholly void as against him, all acts of the administrator, whether approved by that court or not, are equally void; the receipt of money by the administrator is no

discharge of a debt; and a conveyance of property by the administrator passes no title.

"* * * But proof under proper pleadings, *even in a collateral suit,* that he was alive at the time of the appointment of the administrator, controls and *overthrows the prima facie evidence of his death, and establishes that the court had no jurisdiction, and the administrator no authority; and he is not bound, either by the order appointing the administrator, or by a judgment in any suit brought by the administrator against a third person, because he was not a party to and had no notice of either.*

"The defendants did not rely upon any statute of limitations nor upon any statute allowing them for improvements made in good faith; but their sole reliance was upon a deed from an administrator, *acting under the orders of a court which had no jurisdiction* to appoint him, or to confer any authority upon him, as against the plaintiff." (Italics ours)

Under the rule in this case, it is obvious that the Probate Court of Ouachita County, Arkansas, being without jurisdiction to order the lands sold because of the fact that such sale was not needed to pay the debts of the estate, did not afford plaintiffs due process of law and took their lands. *One all-important element for jurisdiction of the subject matter* was absent, i.e., the necessity to sell for the payment of debts. The period of limitation does not enter into this case. Neither does the doctrine of laches interfere here, for in the first place, the proceedings had were in a Probate Court, which is a court of law, not qualified to apply the doctrine of laches, and, in the second place, the doctrine of laches is based on damage to innocent parties. There are no innocent third parties intervening here. The estate of Dr. S. A. Thompson still holds title to the land of petitioners. It is therefore obvious that the doctrine of laches could not be applied in a case such as this.

It cannot, we believe, be said that petitioners had an

opportunity to intercede in the original action. They are not parties thereto and it must be further remembered that they are humble negroes residing in a land in which the white man traditionally has had control of the courts; any complaint by petitioners that this white man was defrauding them would have received very little sympathy from the court at that time.

Conclusion

Petitioners have, as a precautionary matter, brought an action in the Ouachita Chancery Court in connection with this cause of action. Petitioners will undoubtedly be barred from trying this cause on the basis that the findings of fact of the Ouachita Probate Court were *res judicata* in this matter. If it is so held, then petitioners will, indeed, have been robbed of their land without any opportunity to have their cause tried on its merits. They will have been barred by the findings of the fact of a court having by its own findings no jurisdiction to grant the relief prayed. They will have had their lands taken from them by an unscrupulous white man only to find that they are not to be afforded the right of redress.

Respectfully submitted,

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